IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.615/2006

Reserved on: 16.11.2007

Decided on.29.11.2007

Jasjit Singh Bedi and another. **…Petitioners**

Versus

Union of India & others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes.*

For the petitioners : **Mr. A.K. Chopra, Sr. Advocate with Mr. Ashish Chopra and Ms. Rupa Pathania, Advocates.**

For the respondents **Mr. Sandeep Sharma, Assistant Solicitor General of India.**

Rajiv Sharma, J. (oral)

Since in this petition a reference has been made to the earlier writ petition preferred by the petitioners bearing CWP No. 415 of 1983, therefore, with the consent of the parties, the record of this writ petition was called for from the Registry for effective adjudication of the present petition.

FACTUAL MATRIX:

One Shri Panna Lal Sood had sold property known as "Villette Estate" bearing survey No. 96 (old grant) situate in Kasauli Cantonment to the petitioners vide sale deed registered with the Sub Registrar, Kasauli on 16.3.1981 for a consideration of Rs. 35,000/-. The property in question was hired to the Military Estate Officer, Ambala. A notice was issued to S/ Shri Somi Mull, Panna Lal Sud, Hanwant Dass Sud, Om Dutt Sud and Kishori Lal Sud on 5th January, 1983 to the following effect:

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes

"Whereas the land comprising Survey No.96 (Bungalow known as Villate Estate) Kasauli Cantonment measuring 0.85 acre and bounded as follows:-

North by: Upper Mall

South by : Inder Villa

East by: Dunedin lodge and Inder Villa.

West by: Survey No.102

Belongs to the President of India (hereinafter called the Government) and is held on 'old grant' terms and contained in Governor General's order No. 179, dated 12.9.1836 under which Government are entitled to resume the said land.

AND WHEREAS the Government have decided to resume the said property under the terms of the aforesaid Governor General order.

Now, therefore, in exercise of the power herein before mentioned, the Government hereby informs you that all rights easements and interests you may have in the said land as also in the buildings standing thereon shall cease on the expiry of 30 days of this notice.

Take notice further the Government are prepared to pay and so offer you the sum of Rs. 15,680 (Rupees fifteen thousand six hundred eighty only) as the value of the authorized erections standing on the said land. In case the amount of compensation offered is not acceptable to you, you are at liberty if you so desire to remove the structures so as to leave the land in the same condition in which it was before the erections. Cheque No. 926227 dated 5.1.1983 for Rs. 15,680/- is enclosed."

The petitioners' father wrote a letter to the Military Estate Officer, Ambala on 1st February, 1983 bringing to his notice that the property in question had been purchased by the petitioners. Shri Harjit Singh Bedi being the guardian of the petitioners requested the Military Estate Officer, Ambala to withdraw the notice. He sent a communication to the Under Secretary to Government of India, Ministry of Defence (Defence Land) on 9th February, 1983 referring to the earlier communication dated 1st

February, 1983 and in addition thereto, he has made a claim for adequate compensation to be determined by the Arbitrator. He again sent a communication to the Military Estate Officer, Ambala Cantonment, Director General of Military Lands of Cantonment, New Delhi and to the Under Secretary, Ministry of Defence, Government of India, New Delhi on 3rd April, 1983 requesting therein that the property in question be released in favour of the petitioners.

FACTS OF CWP NO. 415/1983:

The petitioners along with one Sh. Panna Lal approached this Court by way of CWP No. 415/1983. The petitioners had filed the petition through their guardian and father Shri Harjit Singh Bedi. The petitioners had prayed for the following reliefs:

a) **a writ of certiorari or any other appropriate writ, order or direction quashing the impugned notice annexure P-8 be issued;**
b) **it is further prayed that status quo regarding the physical condition of the property be maintained till the disposal of this writ petition and the property be not demolished meanwhile;**
c) **filing of original/certified copies of annexures P-1 to P-14 may kindly be dispensed with;**
d) **the records of the case may kindly be summoned;**
e) **the costs of the petition be awarded to the petitioners;**
f) **Annexure P-13 and P-15 in so far as they permit the Government to resume the properties be quashed.**

A Division Bench of this Court passed a detailed order on 8th May, 1985. The Court made the following suggestion/observations:

> **"The Court, therefore, makes the following suggestion to the first and third respondents, which the learned Central Government Standing Counsel will convey to them, for their expeditious consideration:**

(1) Just and fair compensation should be paid in respect of the super-structure standing on the land which has been resumed;

(2) Such compensation should be determined on the basis of the market value as on the date of the resumption and such determination should be made by an independent arbitrator; and

(3) Interest at a reasonable rate should be paid from the date of resumption of the land till the date of actual payment of the compensation.

The dispute, if any, with regard to the title and entitlement to/apportionment of the compensation will not be considered as constituting a bar to the consideration of the suggestion hereinabove made since the compensation determined by the Arbitrator will be directed to be deposited in the Registry of this Court and its ultimate disbursement will abide by the directions which the Court will issue in accordance with law at the appropriate stage. The deposit of the amount will constitute sufficient discharge of the concerned respondents so far as their liability to pay the compensation is concerned.

The claim, if any, based on Clause (2) (A) (iv) of the memorandum dated November 15, 1977 (Annexure P-15) will be pursued before the competent authority. An appropriate application in that regard will be made to the first respondent within a period of 15 days from today. The application will be dealt with and decided in accordance with law within a period of three months from the date of the receipt of such application. If an affirmative decision, that is, a favourable decision, is taken thereon, the person (s) in whose favour the allotment is to be made will be left to be decided by the Court herein along with the question concerning the entitlement to/apportionment of the compensation.

The petitioners are agreeable to abide by this suggestion. The concurrence of the petitioners has been conveyed on their behalf by their learned counsel Mr. K.D. Sood.

It is clarified that in both the aforementioned proceedings, the third petitioner or his duly authorized

constituted attorney will be the person who will represent the true owners. Such representation will be without prejudice to the rights and contentions, if any, of the parties.

Adjourned to June 25, 1985."

The writ petition bearing CWP No. 415 of 1983 was disposed of by a Division Bench of this Court on July 24, 1985. The judgment reads thus:

"In view of the directions of the date in Civil Misc. Petition No. 1740 of 1985 as well as in light of the directions issued in the interim order dated May 8, 1985, the writ petition does not survive and it stands disposed of accordingly with liberty reserved to the parties or any of them to move the Court again by way of a Civil Misc. Petition with regard to the following two matters:-

(1) The determination of the question as to the title and entitlement to/apportionment of the compensation; and

(2) The determination of the claim to the benefit of the allotment, if any, made under Clause (2) (A) (iv) of the memorandum dated November 15, 1977."

In consonance with the judgment dated 24th July, 1985, the petitioners moved an application bearing No. 3650/1986. The application was disposed of by a Division Bench of this Court on 5th May, 1987. The operative portion of the order reads thus:

"In light of the material facts which have been brought on the record of CWP No. 415 of 1983 as well as on the record of the present proceeding and in view of the undisputed position emerging therefrom to the effect that the applicants No.1 and 2 herein (Jasjit Singh Bedi and Sarvjit Singh Bedi minors) had purchased the property in question from Panna Lal after the partition took place as aforesaid, the said two minor applicants are held entitled to the compensation amount deposited in the Registry. The Registry is directed to pay the said sum to the guardian of the minors (Harjit Singh Bedi) upon his being identified by Mr. K.D. Sood. The payment made accordingly will constitute full and sufficient discharge of the respondents-

authorities so far as their liability to pay compensation for the building is concerned.

The guardian will deposit the amount paid to him in two separate fixed deposits in equal sums with a nationalized Bank for a period conterminous with the attainment of majority by each of them and will utilize the interest income for their maintenance and education. The fixed deposits will be placed subject to the condition that they will not be encahsed before the due date of maturity and no loan will be raised against the same save and except with the prior permission of this Court. Such an endorsement will be got made on the face of the Fixed Deposit Receipts on the strength of this order. The guardian will file a compliance report within a period of fifteen days from the date of the payment of the deposited amount to him and he will also produce before the Registrar of this Court the Fixed Deposit Receipts for verification.

The application stands disposed of in light of the foregoing directions and observations."

A reference has been made to the above noted facts extracted from CWP No.415 of 1983 to see the true import of the orders passed by a Division Bench in that writ petition.

The petitioners made an application on 4th April, 1988 claiming the grant of alternative site as per the Extant Government Policy. In the application dated 4th April, 1988, the instances of the similarly situated persons, who had been granted the alternative sites, were also mentioned. The relevant portion of the order passed by this Court in CWP No. 415/83 was cited in the application. The Defence Estate Officer, Ambala Circle sent a communication to the Director (DE), Ministry of Defence, Western Command on 17th December, 1999. He had formulated the following points for the consideration:

(a) The resumption notice was served to Sh. Panna Lal Sud etc. who were recorded HOR in the GLR maintained by this Office at the time of resumption.

(b) Sh. Jasjit Singh Bedi and Sarvjit Singh Bedi purchased the property in question from Sh. Panna Lal Sud through registered Sale Deed dt. 16.3.81.

(c) Since, the resumption notice was served in 1983 the Hon'ble High Court observed that the property has fallen in the share of Sh. Panna Lal Sud in light of the partition having taken place in the year 1982. Thus, the compensation on account of resumption was to be paid to the Bedi's, who had purchased the property before its resumption from Shri Panna Lal Sud.

(d) In the same order of May 5th of 83 the Hon'ble High Court has also observed that the applicant had dropped the issue of allotment of alternative site with the condition that they will pursue this aspect with the Competent Authority.

(e) As a sequel to this undertaking the Bedi's have made a request with the Deptt. for allotment of the alternative site."

It appears that despite the case being referred by the Defence Estate Officer, Ambala Circle vide communication dated 17th December, 1999, no decision either way was taken by the competent authority, which led to filing of the present petition. It was specifically averred in the petition that respondent No.2 had also sent reminders to the other respondents on 16th May, 2005 as well as on 27th May, 2005.

Mr. A.K. Chopra, Sr. Advocate had strenuously argued that as per the orders passed by this Court, more particularly, order dated 8th May, 1985 and 5th May, 1987 read in conjunction with the policy framed by the Union of India dated 15th November, 1997, his clients were entitled to the grant of alternative site after the resumption of their property i.e. "Villette Estate" in the year 1983. He had also contended that the respondents cannot deny the grant of alternative site by treating Sh. Panna Lal Sud as owner after the property in dispute has been purchased by the petitioner in the year 1981. He has also submitted that the action of the respondents

of not considering the case of the petitioners is unreasonable and arbitrary.

Mr. Sandeep Sharma, Assistant Solicitor General of India had argued that the petitioners are not entitled to the grant of alternative site as per the Extant Government Policy and had reiterated the stand taken in the reply to the effect that Shri Panna Lal Sud owner had number of properties within the Kasauli Cantonment area.

I have heard the learned counsel for the parties and perused the record.

What can be culled out from the pleadings of the parties in CWP No. 415/83 and CWP No. 615/2006 is that the petitioners have purchased the property called "Villette Estate" by way of registered sale deed dated 6th March, 1981. As far as the claim of the petitioners for the grant of alternative site was concerned, the following order was passed by a Division Bench of this Court on 8th May, 1985:

> **"The claim, if any, based on Clause (2) (A) (iv) of the memorandum dated November 15, 1977 (Annexure P-15) will be pursued before the competent authority. An appropriate application in that regard will be made to the first respondent within a period of 15 days from today. The application will be dealt with and decided in accordance with law within a period of three months from the date of the receipt of such application. If an affirmative decision, that is, a favourable decision, is taken thereon, the person (s) in whose favour the allotment is to be made will be left to be decided by the Court herein along with the question concerning the entitlement to/apportionment of the compensation."**

The writ petition bearing No. 415/1983 was disposed of by a Division of this Court on 24th July, 1985. This Court had reserved the liberty to the parties to approach the Court byway of Civil Misc. Petition with regard to two matters i.e. (i) the determination of the question as to

the title and entitlement to/apportionment of the compensation; and (ii) the determination of the claim to the benefit of the allotment, if any, made under Clause (2) (A) (iv) of the memorandum dated November 15, 1977 and an application bearing No. 3650/1986 was preferred by the petitioners in CWP No. 415 of 1983.

A Division Bench on the basis of the facts, which were brought on record of CWP No. 415/1983 as well as on the basis of the pleadings of the CMP No. 3650/86 came to a definite conclusion that Jasjit Singh Bedi and Sarvjit Singh Bedi had purchased the property in question from Sh. Panna Lal Sud after the partition took place and were entitled to the compensation deposited in the Registry. The findings recorded by a Division Bench to the effect that the petitioners in fact had purchased the land on the basis of the sale deed dated 16.3.1981 was not assailed by the respondents and the same had attained the finality.

The Court has now to consider whether the petitioners were entitled to alternative site as per the policy dated 15th November, 1977, more particularly, clause (2) (A) (iv). It will be congenial to reproduce clause (2) (A) (iv) of the memorandum dated 15th November, 1977 for effective adjudication of the present petition:

> **"Whether the resumptes owners do not possess any other residential plot/house in the Cantonment or the adjoining town or city or notified area; they may be provided, on free hold basis, alternative developed sites not exceeding 500 sq. yards in each cases on payment of 50% of the market value. This would be subject to the condition that in cases of allotment in urban agglomerations coming within the purview of Urban Land (Ceiling & Regulation) Act, 1976, the resumptes should be eligible to hold 500 sq. yds. of vacant land. For this purpose in each cantonment a suitable compact area on the periphery area will be earmarked if no such site is available in the civil area itself."**

The petitioners were minors at the time of adjudication of CWP No. 415 of 1983. Their father wrote a letter to Military Estate Officer, Ambala Circle for compensation/alternative site. The petitioners' father was informed vide communication dated 4th August, 1986 that since Sh. Panna Lal Sood, Om Dutt Sud and Kishori Lal Sud possessed other residential property in Military Cantonment, they were not entitled for alternative site. The petitioners' father immediately after the receipt of letter dated 4th August, 1986 informed the Military Estate Officer on 8th August, 1986 that the property had been purchased by his sons in the year 1981 and after the resumption of the property in the year 1983, the new owners Sh. Jasjit Singh Bedi and Sarvjit Singh Bedi did not own any property in Kasauli and were entitled to an alternative site. It appears that no decision has been taken by the competent authority on the letter dated 4th August, 1986. Thereafter the petitioners' father made an application to the Secretary, Ministry of Defence, Government of India as well as to the Military Estate Officer, Ambala Circle i.e. respondents No.1 and 2 on 4th April, 1988. In the application preferred by the petitioner's father, the factum of the orders passed by this Court in CWP No. 415 was brought to their notice. The petitioners had prayed for the grant of alternative site in favour of the petitioners as per the Extant Government Policy i.e. Annexure P-1 dated 15.11.1977.

It appears that thereafter the matter remained under consideration of the authorities by way of correspondences entered into between them and ultimately the Defence Estate Officer, Ambala Circle vide letter dated 17th December, 1999 forwarded the case to the Director (DE), Ministry of Defence, Western Command i.e. respondent No.3 for taking a decision. No decision has been conveyed to the petitioners pursuant to letter dated 17th December, 1999 till date.

The petitioners have purchased the property on 16.3.1981. This property was resumed by the Union of India vide notice dated 5th January, 1983. The petitioners were held entitled to compensation as per order of this Court dated 5th May, 1987 after treating them bonafide purchaser of the property. Since the petitioners had been treated as bonafide purchasers of the property, their case was required to be considered as per Annexure P-1. The petitioners' father had informed the authorities on 8th August, 1986 that the petitioners did not own any property in Kasauli Cantonment area. The respondents instead of taking a conscious decision on the basis of the orders passed by this Court in CWP No. 415/83, more particularly, orders dated 8.5.1985 read in conjunction with order dated 5th May, 1987 took a strange stand in their communications addressed to the petitioners and their father. The gist of the objections raised by the respondents was that Sh. Panna Lal Sood and his brothers were owners of the property in Cantonment Area, Kasauli. This plea was not available to the respondents after the property in question has been purchased by the petitioners on 16th March, 1981 which fact was also recognized by this Court as is evident from order dated 5th May, 1987. The petitioners had been granted compensation after taking over the property vide notice dated 5th January, 1983. The compensation has been paid to the petitioners after treating them as owners of the property. The findings recorded by a Division Bench of this Court in its order dated 5th May, 1987 were not assailed by the respondents and they had attained finality with regard to recognizing the petitioners as true owners of the property on the basis of which the petitioners were granted compensation. The stand taken by the respondents in their reply that the decision has already been taken on 4th August, 1986 is contrary to law and the facts of the case. The rights of the

petitioners were to be determined without referring to the case of Panna Lal Sud and his other brothers.

On the basis of memorandum dated 15.11.1977, the case of the petitioners has been forwarded by the Military Estate Officer to respondent No.3 on 27.12.1999. The points formulated by him for consideration of respondent No.3 had already been reproduced in para supra. No decision has been taken by respondent No.3 on the basis of communication dated 17th December, 1999 though a period of eight years has elapsed.

Once a land policy has been framed on 15.11.1997, the same is required to be scrupulously followed. The clauses of the policy have to be applied in their letter and spirit. The wholesome principle for framing the policy for providing the alternative site is to rehabilitate the owners whose properties have been taken over by the Union of India. This principle has not been taken into consideration by the respondents while declining the prayer of the petitioners for alternative site, more particularly, when it has been brought to the notice of the authorities that the petitioners did not own any property within the cantonment area of Kasauli. The decision of the respondents is contrary to their own policy. This Court is of the firm view that the petitioners have not been treated in a just and fair manner and the respondents have taken arbitrary decision while declining the request of the petitioners for providing alternative site.

The plea raised by the respondents in their reply that the prior permission of the Government of India, Ministry of Defence was required for the sale/purchase is untenable in view of the earlier orders passed by this Court on 8th May, 1985 in conjunction with order dated 5th May, 1987. This plea was never raised before a Division Bench of this Court in CWP No. 415/83 and the respondents are precluded from taking this plea in the present petition. The petitioners have been held to be the owners of the

property on the basis of sale deed dated 16.3.1981 and payment of compensation to them. The respondents themselves have treated the petitioners as owners and consequently compensation was also released in their favour. The petitioners' father in his representation dated 4th April, 1988 has also given instances of four properties whereby the Union of India had regularized the sales made without the prior sanction of the competent authority. The respondents have not denied this averment in their reply though specifically raised in letter dated 4th April, 1988. The sale made in favour of the petitioners stood regularized after the payment of compensation in their favour by the respondents.

The Hon'ble Supreme Court in ***Commissioner of Police versus Gordhandas,*** AIR 1952 SC 16 has laid down that public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing. Their Lordships have held as under:

> **"Turning now to the language used we are clear that by no stretch of imagination can this be construed to be an order which in effect says- "I, so and so, by virtue of the authority vested in me, do hereby order and direct this and that". If the Commissioner of Police had the power to cancel the license already granted and was the proper authority to make the order, it was incumbent on him to say so in express and direct terms. Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing.**
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> **It was then objected that performance cannot be compelled for another reason. Section 45, it was said, is limited to duties which must be performed or forborne "under any law for the time being in force," and it was argued that this means statute law. There is authority for this point of view,**

but we see no reason for limiting the clear words of the section or for reading into it matter which is not there. The provision is a beneficent one to compel the performance of public duties by public officers. It is intended to open up a swift and summary remedy to the subject against, on the one hand, certain kinds of abuse or excesses on the part of public officers or, on the other, of laziness, incompetence, inertia or inaction on their part. We can see no reason why statutory duties should be placed on any different plane from other duties enjoined by any other kind of law, especially as some statutory duties are slight or trivial when compared to certain other kinds of duties which are not referable to a statutory provision. In our opinion, the words "any law" are wide enough to embrace all kinds of law and we so hold."

Their Lordships of the Hon'ble Supreme Court have held in ***Rohtas Industries Ltd. versus S.D. Agarwal and another etc.,*** AIR 1969 SC 707 that the discretion must be used by the authorities honestly and not for corrupt or ulterior purposes. Their Lordships have further held that the authority must form the requisite opinion honestly and after applying its mind to the relevant materials before it. Their Lordships have held as under:

"The law recognizes certain well recognized principles within which the discretionary power under section 237 (b) must be exercised. There must be a real exercise of the discretion. The authority must be exercised honestly and not for corrupt or ulterior purposes. The authority must form the requisite opinion honestly and after applying its mind to the relevant materials before it. In exercising the discretion the authority must have regard only to circumstances suggesting one or more of the matters specified in sub-clauses (i), (ii) and (iii). It must act reasonably and not capriciously or arbitrarily. It will be an absurd exercise of discretion, if, for example, the authority forms the requisite opinion on the ground that the director in charge of the company is a member of a particular community. Within these narrow limits the opinion is not

conclusive and can be challenged in a court of law. Had section 237 (b) made the opinion conclusive, it might be open to challenge as violative of Articles 14 and 19 of the Constitution, see Corporation of Calcutta versus Calcutta Tramways Co. Ltd, 1964-5 SCR 25 = (AIR 1964 SC 1279) distinguishing 1962 Supp SCR 632 = (AIR 1962 SC 1371). Section 237 (b) is not violative of Articles 14 and 19.

Their Lordships have reiterated that the relevant material alone has to be taken into consideration while taking an administrative decision in ***R.D. & Chemical Co. versus Company Law Board*** AIR 1970 SC 1789 as under:

"The Solicitor-General appearing for the Union of India contended that by the use of the expression "in its opinion" occurring in section 326 (2) (b) of the Companies Act, it is meant that the subjective satisfaction of the Central Government is determinative of the question whether the proposed person is fit and proper to be appointed managing agent, and if the Board reached the conclusion (as it has done in the present case on considerations which are not irrelevant) that Govan Brothers is not a fit and proper person to be appointed managing agent, the decision based on the satisfaction cannot be challenged before the High Court. The argument is that the existence of the satisfaction as well as the decision reached on that satisfaction are immune from the scrutiny of the Court. We are unable to agree. By sub-s. (2) of section 326 of the Companies Act, the Central Government is invested with power to decide whether it is against the public interest to allow the Company to have a managing agent, whether the person proposed is fit and proper to be appointed or re-appointed managing agent, whether the conditions of the managing agency agreement proposed are fair and reasonable, and whether the managing agent proposed has fulfilled the conditions which the Central Government has required him to fulfill. Investment of that power carries with it a duty to act judicially: i.e. to hold an enquiry in a manner consistent with rules of natural justice, to consider all relevant

matters, to ignore irrelevant matters, and to reach a conclusion without bias, without predilection and without prejudice. The satisfaction contemplated by section 326 must, therefore, be the result of an objective appraisal of the relevant materials. The reason is clear. By S. 326 several restrictions upon the power of the Companies and individuals to carry on business are imposed in the interest of the share-holders, the creditors and in the larger interests of the public. The order made by the Central Government under section 326 may result in serious detriment of the Company and the proposed managing agent, but in the larger public interest, if it is valid they have to suffer it. Exercise of the power conferred upon the Central Government is restrictive of valuable rights of the Company and of the proposed managing agent, and severely restricts the liberty of contract.

The scheme of the section implies investigation and a decision on the matters set out therein. Section 326 lays down conditions by sub-s. (1) (a) in which the Central Government may override the resolution of the general body of shareholders in certain specified conditions. Upon the Central Government is imposed a duty not to accord approval to the appointment or re-appointment of a proposed managing agent in the light of cls. (a), (b) & (c) of sub-s. (2). Though the sub-section is enacted in form negative, in substance it confers power upon the Government subject to the restrictions imposed by cls. (a), (b) & (c) to refuse to accord approval. Sub-section (2) imposes upon the Central Government the duty not to accord approval to appointment or re-appointment of a proposed managing agent unless the Government is satisfied that the managing agent is a fit and proper person to be appointed, that the conditions of the managing agency agreement are fair and reasonable and that the managing agent has fulfilled the conditions which the Central Government required him to fulfil. Thereby the Central Government is not made the final arbiter of the existence of the grounds on which the satisfaction may be founded. The satisfaction of the Government which is determinative is satisfaction as to the existence of certain objective facts. The

recital about satisfaction may be displaced by showing that the conditions did not exist, or that no reasonable body of persons properly versed in law could have reached the decision that they did.

The Courts, however, are not concerned with the sufficiency of the grounds on which the satisfaction is reached. What is relevant is the satisfaction of the Central Government about the existence of the conditions in cls. (a), (b) & (c) of sub-s. (2) of section 326. The enquiry before the Court, therefore, is whether the Central Government was satisfied as to the existence of the conditions. The existence of the satisfaction cannot be challenged except probably on the ground that the authority acted mala fide. But if in reaching its satisfaction the Central Government misapprehends the nature of the conditions, or proceeds upon irrelevant materials, or ignores relevant materials, the jurisdiction of the Courts to examine the satisfaction is not excluded. The power, in our judgment, is a quasi judicial power and not administrative; it necessarily implies a duty arising from the nature of the act empowered to be done, the object for which it is to be done, the conditions in which it is to be done, and its repercussion upon the power of the Company, the shareholders, the creditors and the general public for whose benefit the power is to be exercised.

We are, therefore, unable to agree that because the exercise of the power depends upon satisfaction, its exercise cannot be subjected to judicial review the Government being the final arbiter of the conditions in which the power may be exercised.

But in dealing with a petition against an order made by the Board under section 326 of the Companies Act, 1956, the High Court is not constituted a Court of Appeal over the judgment of the Board. The Court has merely to consider whether in arriving at its decision the Board has restricted itself to the enquiry contemplated to be made and has taken into consideration all the relevant circumstances and that its decision is not vitiated by irrelevant or extraneous matters."

The Hon'ble Supreme Court in ***State of U.P. versus Smt. Pista Devi and others***, (1986) 4 SCC 251 has held that for those who were being expropriated on account of the acquisition proceedings would be eligible for some relief at the hands of concerned development authority for rehabilitation. Their Lordships have held as under:

> **"It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in Section 21 (2) of the Delhi Development Act, 1957 which reads as follows:**
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> > **21(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:**
> >
> > **Provided that where the Authority or the local authority concerned proposed to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements**

as to its development and use as the Authority or the local authority concerned may think fit to impose.

Although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question"

Their Lordships while taking into consideration (1986) 4 SCC 251 has held in ***Hansraj H. Jain versus State of Maharashtra and others*** (1993) 3 SCC 634 that the public authorities and the Government are bound to act reasonably and fairly and each action of such authority must pass the test of reasonableness precisely for this reason, even when there was no time limit for completing the acquisition proceedings from the date of initiation of the proceedings by issuing notification under section 4 of the Land Acquisition Act, the Court had, in appropriate cases, looked into the reasonableness of the action undertaken by the acquiring authority and whenever action taken was found to be lacking in bona fide and made in colourable exercise of the power, the Court did not hesitate to strike down unfair and unjust acquisition proceedings. Their Lordships after making these observations had directed the authorities to offer alternative sites on the basis of actual cost of development having regard to delay in completion of acquisition proceedings. Their Lordships have held as under:

"Before the amendment of Land Acquisition Act, there was no time limit to complete the land acquisition proceedings. The

acquiring authorities were free to initiate the land acquisition proceedings in any manner they chose and were permitted to sit over such proceedings without any just cause for years together so as to deprive the land owners of the reasonable price of the land. There is no manner of doubt that the public authorities and the Government are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness and precisely for this reason, even when there was no time limit for completing the acquisition proceedings from the date of initiation of the proceedings by issuing notification under section 4 of the Land Acquisition Act, the Court had, in appropriate cases, looked into the reasonableness of the action undertaken by the acquiring authority and whenever action taken was found to be lacking in bona fide and made in colourable exercise of the power, the Court did not hesitate to strike down unfair and unjust acquisition proceedings. We have, however, indicated that in the instant cases, there is no firm foundation for coming to the conclusion that the acquisition proceedings had been initiated casually without any precise objective and initiation of the acquisition proceedings by issuing notifications under section 4 of the Land Acquisition Act was made with the sole intention to peg down the prices for acquisition in remote future, thereby causing loss and injury to the affected land owners. Despite lamentable delay in completing the acquisition proceedings in the instant cases, we are not inclined to hold that such acquisition proceedings were otherwise mal aide or invalid for the reasons indicated hereinbefore and the decisions cited by the learned counsel for the parties for striking down the acquisition proceedings are not applicable in the facts and circumstances of the cases."

We, therefore, direct the concerned authorities to offer the alternative site as per the scheme framed in 1976 referred of hereinbefore to the affected land owners on the basis of the actual cost of development by charging the cost of the acquisition and the development charges and no more. Such direction, we feel, is required to be made particularly in view of the fact that acquisition proceedings had been pending for a

number of years, as a result of which the amount of compensation for the acquisition being referable to the period when notices under section 4 of the Land Acquisition Act were issued, became insignificant and it is reasonably apprehended that unless the land by way of alternative site as per the scheme is offered to the affected land owners at a subsidized rate as indicated hereinbefore, it will not be possible for the land owners to take such allotment by paying usual prices intended to be changed from them and the offer of alternative site will for all practical purposes be illusory."

The Hon'ble Supreme Court in ***Bharat Petroleum Corporation Ltd. versus Maddula Ratnavalli and others***, (2007) 6 SCC 81 has held that the reasonableness and arbitrariness are the hall marks of any action by the State. Their Lordships have held that the action of the State, however, must be judged on the touch-stone of reasonableness. Their Lordships have held as under:

"Appellant-company is a 'State' within the meaning of Article 12 of the Constitution of India. It is, therefore, enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner whatsoever will meet the requirements of law. The statute uses the words "if so desired by the Central Government". Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. Indisputably, the 1976 Act is a special statute. It overrides the provisions of Section 107 of Transfer of Property Act. The action of the State, however, must be judged on the touchstone of reasonableness.

Reasonableness and non-arbitrariness are the hallmarks of an action by the State. Judged from any angle, the action on the part of the appellant does not satisfy the test of fairness or unreasonableness. It being wholly arbitrary cannot be sustained.

In any event, when two views are possible, a view which satisfies the constitutional rights or requirements, must be preferred. "

Now, the Court has to consider to what relief the petitioners are entitled taking into consideration the protracted litigation the petitioners have been forced to undergo by the respondents by not taking the decision promptly for allotting the alternative site as per policy dated 15th November, 1997. The petitioners had approached this Court by way of CWP No. 415 of 1983. The CWP No. 415 of 1983 was disposed of by a Division Bench of this Court on 24.7.1985 but the liberty was reserved to the parties to move the Court again by way of a civil miscellaneous petition with regard to two matters (1) the determination of the question as to the title and entitlement to/apportionment of the compensation; and (2) the determination of the claim to the benefit of the allotment, if any, made under Clause 2 (A) (iv) of the memorandum dated November 15, 1977. In sequel to order dated 24th July, 1985, the petitioners filed a CMP No. 3650/1986 in this Court for the release of compensation. The petitioners were held owners of the property on the basis of the sale effected in the year 1981 and the Court had directed the release of compensation to them. The representations made by the petitioners through their father remained undecided. The authorities did not took any action even on the letter dated 12.12.1999 sent by the Military Estate Officer to Director (DE) Western Command for taking a decision. The reminders were sent on 16.5.2005 and 27.5.2005 which were also not addressed to by the respondents as per memorandum dated 15th November, 1977.

It is thus evident that the petitioners are in litigation for the enforcement of their valuable constitutional/legal rights since 1983 but till date no decision has been taken by the respondents for the allotment of alternative site as per memorandum dated 15th November, 1977. It is in

this background that the Court has to issue appropriate direction to the respondents to meet the ends of justice, equity and fair play. In normal circumstances, this Court could have issued a writ of mandamus directing the respondents to take a decision as per memorandum dated 15th November, 1977, but in view of the facts of this case as projected above and the case law, the Court to do complete justice is required to issue writ of mandamus directing the respondents to allot alternative site to the petitioners after resumption of their property by the respondents on 5th January, 1983.

Their Lordships of the Hon'ble Supreme Court ***in Badrinath versus Government of Tamil Nadu and others,*** (2000) 8 SCC 395 taking into consideration the unfair treatment meted out to the appellant had issued mandamus to the authorities to grant him the benefit of super time scale from the date on which the appellant's junior was granted the super time scale instead of directing the respondent to consider the case of the appellant. Their Lordships have held as under:

> **"In the light of the above precedents, we have considered whether this is a fit case where this Court should issue a mandamus or remit the matter back to the State Government. After giving our anxious consideration to the facts of the case, we are of the view that having regard to our findings on Points 1 to 5 and to the continuous unfair treatment meted out to the appellant by the State of Tamil Nadu – even as accepted by the Central Government in its comments – this is a pre-eminently fit case requiring the issue of a mandamus. We are, therefore, constrained to exercise all the powers of this Court for rendering justice and to cut short further proceedings. The consideration of the appellant's case for the said promotion has been hanging fire and going up and down for the last twenty five years. Disgusted with the delays, the appellant has also taken voluntary retirement. In the light of our decision on Points 1 to 5, we declare the censure in the fourth case as void**

and without jurisdiction and in the alternative also, as liable tobe quashed under Wednesbury principles. The adverse remarks of bygone years prior to 1972 have lost all their sting. The positive facts in the appellant's favour both recorded (at the compulsion of the Central Government) and others to which we have referred to earlier as meriting consideration are, in our opinion, sufficient to entitle him for promotion to the super time scale. The appellant's case is, in our view, no less inferior to the case of the other officers who were conferred the similar benefit of super time scale by the State of Tamil Nadu, details of which have been profusely given in the writ petition. For the aforesaid reasons, we quash the punishment of censure, the assessment made by the Joint Screening Committee, the Orders passed by the State and Central Government refusing to grant him super time scale and in rejecting the appeal of the appellant and we further direct as follows:

In the special and peculiar circumstances of the case, we direct the respondents to grant the appellant the benefit of the super time scale from the date on which the appellant's junior Shri P.. Kandaswamy was granted super time scale. The respondents are accordingly directed to pass an order in this behalf within eight weeks of the receipt of this order and to give him all consequential benefits, attendant thereto. The said benefits shall also be reflected in his pension and other retiral benefits. They shall be worked out and paid to him within the time aforementioned."

Similarly, their Lordships of the Hon'ble Supreme Court in ***Narinder Mohan Arya versus United India Insurance Co. Ltd. and others***, (2006) 4 SCC 713 taking into consideration that the disciplinary proceedings were initiated against the appellant as far back 1976, directed his reinstatement instead of remanding back the matter to the disciplinary authority for consideration. Their Lordships have held as under:

"For the foregoing reasons the impugned judgments cannot be sustained which are set aside accordingly. Although, the

consequence of setting aside of the said orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merit, but having regard to the fact that the disciplinary proceedings were initiated against the appellant as far back in 1976, we refrain ourselves from doing so. He indisputably, have suffered a lot. However, the question which arises is what relief should be granted to the appellant. The appellant shall be reinstated in service. We, however, while directing reinstatement of the appellant, keeping in view of the fact that no work had been taken from him, direct that only 50% of the back wages shall be payable. The appeal is allowed with the abovementioned directions."

The decision of the respondents not to allot alternative site to the petitioners is capricious, arbitrary and unreasonable and the petitioners had to suffer endlessly since 1983.

Consequently, in view of the observations made hereinabove, the writ petition is allowed. Annexure R-5 dated 4th August, 1986 is quashed and set aside. A writ of mandamus is issued to the respondents to allot alternative site to the petitioners within a period of 8 weeks from today. The petitioners are also held entitled to costs, which are quantified at Rs. 10,000/-.

November 29, 2007 **(Rajiv Sharma), Judge**

Awasthi